

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Current Law

Voyeurism

Section 810.14, F.S., which became law in 1998, provides that the offense of voyeurism is committed when a person, having lewd, lascivious, or indecent intent, secretly observes, photographs, films, videotapes, or records another person when the second person is in a dwelling, structure, or conveyance that provides a reasonable expectation of privacy. The Florida Standard Jury Instructions in Criminal Cases 11.13 for s. 810.14, F.S., states that the words lewd, lascivious, and indecent mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act. The phrase "reasonable expectation of privacy" is not defined in this section or in the Standard Jury Instructions.

A violation is a first-degree misdemeanor, punishable by imprisonment not exceeding one year or by a fine of not more than \$1,000. If a person who violates this section has been previously convicted or adjudicated delinquent two or more times of any violation of this section, the subsequent violation is a third-degree felony, punishable by a term of imprisonment not exceeding five years, by a fine of not more than \$5,000, or by a term of imprisonment not exceeding 10 years for certain violent or habitual offenders.

Video Voyeurism

Section 810.145, F.S., which became law in 2004, prohibits video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Video voyeurism dissemination and commercial video voyeurism dissemination involve the distribution of images that are created as a result of video voyeurism.

The offense of video voyeurism may be committed in three ways. Each involves the use of an imaging device without the victim's knowledge and consent. "Imaging device" is defined as any mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment or format capable of recording, storing, or transmitting visual images of another person. This definition embraces the devices that could be used to observe, photograph, film, videotape, or record another person under the general voyeurism statute.

- A person can commit the offense by intentionally using or installing an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or exposing a sexual organ at a place and time when the person has a reasonable expectation of privacy. In order to violate the statute, the act must be done for the offender's own amusement, entertainment, sexual arousal, or profit, or for the purpose of degrading or abusing another person.
- A person can commit the offense by intentionally permitting the use or installation of an imaging device to secretly view, broadcast, or record a person who is dressing, undressing, or exposing a sexual organ at a place and time when the person has a reasonable expectation of privacy.

- A person can commit the offense by intentionally using an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person for the purpose of viewing the person's body or undergarments. The act must be done on the voyeur's own behalf or on the behalf of another person, or for the amusement, entertainment, sexual arousal, gratification, or profit of the voyeur or another person.

The video voyeurism statute defines "place and time when a person has a reasonable expectation of privacy." It is a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without concern for being viewed, recorded, or broadcast. Examples include the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.

The punishment range for video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination under s. 810.145, F.S., are identical to that of voyeurism under s. 810.14, F.S. The first violation is a first degree misdemeanor and a subsequent violation results in a third degree felony.

Similarities and Differences between Voyeurism and Video Voyeurism

In most cases, a person who is committing voyeurism or attempted voyeurism by means other than unaided visual observation would also be committing video voyeurism. There are undoubtedly theoretical exceptions, but these do not seem to have significance in the real world. For example, it is theoretically possible that someone could have lewd, lascivious, or indecent intent in viewing another person but not have the purpose of seeing the other person dressing, undressing, or exposing a sexual organ.

While there may be narrow exceptions to the general rule that the offense of video voyeurism includes the offense of voyeurism using an artificial device, the converse is not true. The offense of video voyeurism embraces criminal behavior that could not be charged as voyeurism under s. 810.14, including "up-skirt" photography in a public place.

Additionally, the penalties for voyeurism and video voyeurism are identical as noted above.

Effect of this bill

This bill amends s. 810.14, F.S., to remove references to photographing, filming, videotaping, or recording. This clarifies that the proper charge for voyeuristic activities using an imaging device is video voyeurism as set forth in s. 810.145, F.S. Because almost any activity using such devices to commit voyeurism can also be charged as video voyeurism under s. 810.145, F.S., there is no significant change in the law.

C. SECTION DIRECTORY:

Section 1 amends s. 810.14, F.S., relating to video voyeurism.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine this bills prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES